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SOCIAL AND HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS

Letter dated 21 July 1999 from the Secretary-General
to the President of the Economic and Social Council

Further to my letter to you of 5 May 1999 attaching the advisory opinion of the International Court of Justice of 29 April 1999 on the difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights, I have the honour to bring the following to your attention.

During a meeting on 14 May 1999, the Legal Counsel officially transmitted a copy of the advisory opinion to the Permanent Representative of Malaysia to the United Nations. At that meeting, the Legal Counsel emphasized the Court's opinion, inter alia, that the Government of Malaysia did not comply with its obligation to inform the Malaysian courts of the Secretary-General's finding, upheld by the Court, that Dato' Param Cumaraswamy is entitled to immunity from legal process and "that the Government of Malaysia has the obligation to communicate the advisory opinion to the Malaysian courts in order that Malaysia's international obligations be given effect and Dato' Param Cumaraswamy's immunity be respected" (emphasis added). The Legal Counsel also recalled that, pursuant to Section 30 of the Convention, the opinion given by the Court shall be accepted as decisive by the parties.

In his letter of 18 June 1999, the Permanent Representative of Malaysia transmitted a copy of a facsimile dated 15 June 1999 from the Minister for Foreign Affairs of Malaysia informing me that the Government of Malaysia had conveyed the advisory opinion to the competent judicial authorities. On 29 June 1999, the Legal Counsel again met with the Permanent Representative of Malaysia to acknowledge receipt of the Minister for Foreign Affairs' facsimile and to elicit an official communication from the Government of Malaysia on further efforts to fulfil its obligations. In the absence of a response from the Government, the Legal Counsel, in a letter dated 8 July 1999 to the Permanent Representative of Malaysia, expressed appreciation that the Government of Malaysia had conveyed the advisory opinion to the competent judicial authorities and requested further information as to the manner in which the Government would give effect to its obligations and to the Special Rapporteur's immunity from legal process.

As the Economic and Social Council will consider this matter at its current substantive session, you should be aware that, notwithstanding the Legal Counsel's efforts and Dato' Param Cumaraswamy's motions to dismiss the four lawsuits pending against him in the Malaysian civil courts, the competent judicial authorities have fixed the first suit for case management on 6 August 1999; fixed the application to strike the second and third suits for hearing on 5 August 1999, and postponed the application to strike the fourth suit.

Kofi A. Annan